

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CLAUDE BROWN,

Plaintiff,

vs.

KING COUNTY,

Defendant.

No. 2:16-cv-01340-TSZ

STIPULATED PROTECTIVE ORDER
REGARDING CONFIDENTIALITY

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential or private information for which special protection may be warranted, including information that is exempt from public disclosure and non-public records regarding the application process for a work assignments within the King County Department of Transportation. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with CR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

1 **2. “CONFIDENTIAL MATERIAL”**

2 “Confidential” material will include the following documents, electronically stored
3 information (ESI) and tangible things produced or otherwise exchanged:

- 4 a. King County’s personnel and employee records;
- 5 b. Non-public employment applications, resumes, rating packets and test questions
6 concerning the work assignments with King County Department of Transportation at
7 issue in this litigation;
- 8 c. King County’s Office of Civil Rights records;
- 9 d. King County’s Ombudsman’s Office records; and
- 10 e. Any other material enjoying special legal protection from disclosure that is relevant
11 to this case.

12 **3. SCOPE**

13 The protections conferred by this agreement cover not only confidential material (as defined
14 above), but also (1) any information copied or extracted from confidential material; (2) all copies,
15 excerpts, summaries, or compilations of confidential material; and (3) any testimony, conversations,
16 or presentations by parties or their counsel that might reveal confidential material. However, the
17 protections conferred by this agreement do not cover information that is in the public domain or
18 becomes part of the public domain through trial or otherwise. In addition, these protections do not
19 apply to information that is already in the public record, such as in a publicly accessible court file or
20 trial transcript.

21 **4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL**

22 4.1 Basic Principles

23

1 A receiving party may use confidential material that is disclosed or produced by another
2 party or by a non-party in connection with this case only for prosecuting, defending, or
3 attempting to settle this litigation. Confidential material may be disclosed only to the categories
4 of persons and under the conditions described in this agreement. Confidential material must be
5 stored and maintained by a receiving party at a location and in a secure manner that ensures that
6 access is limited to the persons authorized under this agreement.

7 4.2 Disclosure of "CONFIDENTIAL" Information or Items.

8 Unless otherwise ordered by the court or permitted in writing by the designating party, a
9 receiving party may disclose any confidential material only to:

10 (a) the receiving party's counsel of record in this action, as well as employees of
11 counsel to whom it is reasonably necessary to disclose the information for this litigation;

12 (b) the officers, directors, and employees (including in house counsel) of the
13 receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties
14 agree that a particular document or material produced is for Attorney's Eyes Only and is so
15 designated;

16 (c) experts and consultants to whom disclosure is reasonably necessary for this
17 litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

18 (d) the court, court personnel, and court reporters and their staff;

19 (e) copy or imaging services retained by counsel to assist in the duplication of
20 confidential material, provided that counsel for the party retaining the copy or imaging service
21 instructs the service not to disclose any confidential material to third parties and to immediately
22 return all originals and copies of any confidential material;

1 (f) during their depositions, witnesses in the action to whom disclosure is reasonably
2 necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A),
3 unless otherwise agreed by the designating party or ordered by the court. Pages of transcribed
4 deposition testimony or exhibits to depositions that reveal confidential material must be separately
5 bound by the court reporter and may not be disclosed to anyone except as permitted under this
6 agreement;

7 (g) the author or recipient of a document containing the information or a custodian
8 or other person who otherwise possessed or knew the information.

9 4.3 Filing Confidential Material

10 Before filing confidential material or discussing or referencing such material in court
11 filings, the filing party shall confer with the designating party to determine whether the
12 designating party will remove the confidential designation, whether the document can be
13 redacted, or whether a motion to seal or stipulation and proposed order is warranted. Local Civil
14 Rule 5(g) sets forth the procedures that must be followed and the standards that will be applied
15 when a party seeks permission from the court to file material under seal.

16 4.4 Searching Confidential Material

17 The parties may mutually agree to allow any party to review records on-site, which could
18 contain confidential material, in order to ascertain their responsiveness and designate the materials
19 for copying and production. In the event the parties agree to employ such a procedure and a
20 party’s counsel views material it reasonably believes would qualify as confidential under this order,
21 counsel will agree to treat the material as if it were designated confidential under this order or until
22 further order of the court or agreement of the parties.

23 5. **DESIGNATING PROTECTED MATERIAL**

1 5.1 Exercise of Restraint and Care in Designating Material for Protection.

2 Each party or non-party that designates information or items for protection under this
3 agreement must take care to limit any such designation to specific material that qualifies under
4 the appropriate standards. The designating party must designate for protection only those parts of
5 material, documents, items, or oral or written communications that qualify, so that other portions
6 of the material, documents, items, or communications for which protection is not warranted are
7 not swept unjustifiably within the ambit of this agreement.

8 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
9 shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to
10 unnecessarily encumber or delay the case development process or to impose unnecessary
11 expenses and burdens on other parties) expose the designating party to sanctions. If it comes to a
12 designating party's attention that information or items that it designated for protection do not
13 qualify for protection, the designating party must promptly notify all other parties that it is
14 withdrawing the mistaken designation.

15 5.2 Manner and Timing of Designations

16 Except as otherwise provided in this agreement (see, *e.g.*, second paragraph of section
17 5.2(a) below), or as otherwise stipulated or ordered, disclosure of discovery material that
18 qualifies for protection under this agreement must be clearly so designated before or when the
19 material is disclosed or produced.

20 (a) Information in documentary form: (*e.g.*, paper or electronic documents and
21 deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings),
22 the designating party must affix the word "CONFIDENTIAL" to each page that contains
23 confidential material. If only a portion or portions of the material on a page qualifies for

1 protection, the producing party also must clearly identify the protected portion(s) (*e.g.*, by
2 making appropriate markings in the margins).

3 (b) Testimony given in deposition or in other pretrial or trial proceedings: the
4 parties must identify on the record, during the deposition, hearing, or other proceeding, all
5 protected testimony, without prejudice to their right to so designate other testimony after
6 reviewing the transcript. Any party or non-party may, within fifteen days after receiving a
7 deposition transcript, designate portions of the transcript, or exhibits thereto, as confidential.

8 (c) Other tangible items: the producing party must affix in a prominent place on
9 the exterior of the container or containers in which the information or item is stored the word
10 "CONFIDENTIAL." If only a portion or portions of the information or item warrant protection,
11 the producing party, to the extent practicable, shall identify the protected portion(s).

12 5.3 Inadvertent Failures to Designate

13 If timely corrected, an inadvertent failure to designate qualified information or items does
14 not, standing alone, waive the designating party's right to secure protection under this agreement
15 for such material. Upon timely correction of a designation, the receiving party must make
16 reasonable efforts to ensure that the material is treated in accordance with the provisions of this
17 agreement.

18 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

19 6.1 Timing of Challenges

20 Any party or non-party may challenge a designation of confidentiality at any time. Unless
21 a prompt challenge to a designating party's confidentiality designation is necessary to avoid
22 foreseeable, substantial unfairness, unnecessary economic burdens, or a significant disruption or
23

1 delay of the litigation, a party does not waive its right to challenge a confidentiality designation
2 by electing not to mount a challenge promptly after the original designation is disclosed.

3 6.2 Meet and Confer

4 The parties must make every attempt to resolve any dispute regarding confidential
5 designations without court involvement. Any motion regarding confidential designations or for a
6 protective order must include a certification, in the motion or in a declaration or affidavit, that
7 the movant has engaged in a good faith meet and confer conference with other affected parties in
8 an effort to resolve the dispute without court action. The certification must list the date, manner,
9 and participants to the conference. A good faith effort to confer requires a face-to-face meeting
10 or a telephone conference.

11 6.3 Judicial Intervention

12 If the parties cannot resolve a challenge without court intervention, the designating party
13 may file and serve a motion to retain confidentiality under Local Civil Rule 7 (and in compliance
14 with Local Civil Rule 5(g), if applicable). The burden of persuasion in any such motion shall be
15 on the designating party. Frivolous challenges and those made for an improper purpose (*e.g.*, to
16 harass or impose unnecessary expenses and burdens on other parties) may expose the
17 challenging party to sanctions. All parties shall continue to maintain the material in question as
18 confidential until the court rules on the challenge.

19 **7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**
20 **OTHER LITIGATION OR SUBJECT TO A PUBLIC DISCLOSURE REQUEST**

21 If a party is served with a subpoena or a court order issued in other litigation that compels
22 disclosure of any information or items designated in this action as “CONFIDENTIAL,” that
23 party must:

1 (a) promptly notify the designating party in writing and include a copy of the subpoena or
2 court order;

3 (b) promptly notify in writing the party who caused the subpoena or order to issue in the
4 other litigation that some or all of the material covered by the subpoena or order is subject to this
5 agreement. Such notification shall include a copy of this agreement; and

6 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
7 designating party whose confidential material may be affected.

8 **8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

9 If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential
10 material to any person or in any circumstance not authorized under this agreement, the receiving
11 party must immediately (a) notify in writing the designating party of the unauthorized
12 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected material,
13 (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of
14 this agreement, and (d) request that such person or persons execute the "Acknowledgment and
15 Agreement to Be Bound" that is attached hereto as Exhibit A.

16 **9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
17 **PROTECTED MATERIAL**

18 When a producing party gives notice to receiving parties that certain inadvertently
19 produced material is subject to a claim of privilege or other protection, the obligations of the
20 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(6). This provision is
21 not intended to modify whatever procedure may be established in an e-discovery order or
22 agreement that provides for production without prior privilege review. Parties shall confer on an
23 appropriate non-waiver order under Fed. R. Evid. 502.

1 **10. NON TERMINATION AND RETURN OF DOCUMENTS**

2 Within 60 days after the termination of this action, including all appeals, each receiving
3 party must return all confidential material to the producing party, including all copies, extracts
4 and summaries thereof. Alternatively, the parties may agree upon appropriate methods of
5 destruction. Notwithstanding this provision, counsel are entitled to retain one archival copy of all
6 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,
7 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert
8 work product, even if such materials contain confidential material.

9 The confidentiality obligations imposed by this agreement shall remain in effect until a
10 designating party agrees otherwise in writing or a court orders otherwise.

11 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

12 DATED this 15th day of May, 2017.

13
14 s/DARRYL PARKER

15 Darryl Parker, WSBA #30770
16 Attorney for Plaintiff Claude Brown

17 s/ERIN OVERBEY

18 Erin Overbey, WSBA #21907
19 Attorney for Defendant King County

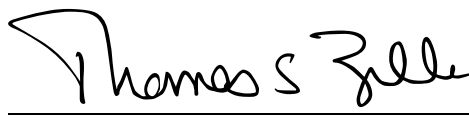
20 s/KIMBERLY FREDERICK

21 Kimberly Y. Frederick, WSBA No. #37857
22 Attorney for Defendant King County
23

1 **ORDER**

2 PURSUANT TO STIPULATION, IT IS SO ORDERED.

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4 Dated this 17th day of May, 2017.

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7 Thomas S. Zilly
United States District Judge

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10 Presented by:

11
12 By: s/ERIN OVERBEY
13 Erin Overbey
14 Kimberly Y. Frederick
Senior Deputy Prosecuting Attorneys
Attorneys for Defendant King County

15
16 Approved as to Form and For Entry;

17 Civil Rights Justice Center, PLLC

18
19 By: s/DARRYL PARKER
Darryl Parker, WSBA #30770
Attorney for Plaintiff

EXHIBIT A

AGREEMENT TO BE BOUND BY PROTECTIVE ORDER

I, the undersigned, hereby acknowledge that I have received and read a copy of the Stipulated Protective Order ("Order") entered in *Claude Brown v. King County*, United States District Court; Cause No. 16-cv-01340, that I understand the provisions in the Order; that I agree to be bound by all provisions of the Order; that I submit to the jurisdiction of the Court for the purpose of enforcing the Order; and that I understand that sanctions may be imposed by the Court, including an order of contempt, if I fail to abide by and comply with all the terms, conditions and restrictions imposed by the Order.

Date

Signature

Name Printed